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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,815	02/24/2004	Dietrich Scherzer	54166	1166
26474	7590	07/17/2006	EXAMINER	
NOVAK DRUCE DELUCA & QUIGG, LLP 1300 EYE STREET NW SUITE 400 EAST TOWER WASHINGTON, DC 20005				ZEMEL, IRINA SOPJIA
ART UNIT		PAPER NUMBER		
		1711		

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/784,815	SCHERZER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Irina S. Zemel	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 05 May 2006.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,5,14 and 24-41 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2,5,14 and 24-41 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5-5-06.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 5, 24-27, 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 5-262910 to Mitsubishi Rayon Co, Ltd., (hereinafter "Mitsubishi").

Mitsubishi discloses completely open cell foams (up to 1005 open cell) composed of a high-temeprature resistant thermoplastic polysulfone polymer of formula [2] (see page 2 (columns 1-2) of the patent. The cell size of the foams is less than 10 microns which fully correspond to the claimed cell size. The invention as claimed, thus is fully anticipated by the disclosed foamed products.

### ***Claim Rejections - 35 USC § 102/103***

Claims 28-33 and 36-41 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mitsubishi.

The disclosure of Mitsubishi is discussed above. The reference does not expressly discloses the extrudability of the claimed temperatures or the density of the resulting foams. However, it is reasonable believed that the density of the disclosed foams inherently correspond to the claimed densities from the total amount of voids and the materials of the foams. The burden is shifted to the applicants to provide factual evidence to the contrary.

Further, it is reasonable believed that the polysulfone disclosed in illustrative example and the polymers disclosed on page 2 inherently exhibit the claimed glass transition temperatures, and also are inherently melt processable at the claimed temperatures as identical to the polysulfones that are known to be melt extrudable at the claimed temperatures (see , for example, Knaus). The burden is shifted to the applicants to provide factual evidence to the contrary.

Claims 1, 2,5, 14, 24-41 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US Patent 4,308,352 to Knaus (hereinafter "Knaus").

Knaus discloses foams obtained by extrusion at high processing temperatures of polysulfones. The disclosed polysulfones exhibit the claimed Tg and are melt extrudable at the claimed temperatures as evident from column 5, lines 16-29 and illustrative examples. The resulting foams exhibit the densities corresponding to the claimed densities (see illustrative examples). The reference does not expressly address the cell size (which is very broadly claimed in the instant claims), or the % of open cells in the foams. However, from the processing conditions (such as very high processing temperatures identical to the conditions disclosed in the instant application and the amounts of specified blowing agents) it is reasonable believed that the disclosed foams inherently exhibit the properties corresponding to the claimed characteristics. The burden is shifted to the applicants to provide factual evidence to the contrary.

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Claims 1, 2,5, 14, 24-41 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US Patent 5,084,484 to Nintz et al., (hereinafter "Nintz").

Nintz discloses polyether ether ketone foams of density corresponding to the claimed density and cell size corresponding to the claimed cell size obtained from PEEKs having T<sub>g</sub> corresponding to the claimed T<sub>g</sub>. See illustrative examples and column 1, lines 33-34. The reference does not expressly address the disclosure of Mitsubishi discussed above. The reference does not expressly disclose the extrudability of the claimed temperatures or the open cell content of the resulting foams. However, from the processing conditions (such as very high processing temperatures, the amounts of specified blowing agents and the presence of specified amounts of nucleating agent) it is reasonable believed that the disclosed foams inherently exhibit the properties corresponding to the claimed characteristics. The burden is shifted to the applicants to provide factual evidence to the contrary.

Further, it is and also are inherently melt processable at the claimed temperatures due to their high melting temperatures.

The burden is shifted to the applicants to provide factual evidence to the contrary.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1,2, 5, 14, 24-41 have been considered but are moot in view of the new ground(s) of rejection.

***Information Disclosure Statement***

The information disclosure statement filed 5-5-2006 fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e) or the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

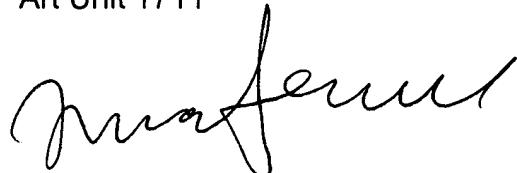
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Irina S. Zemel  
Primary Examiner  
Art Unit 1711

ISZ

A handwritten signature in black ink, appearing to read "Irina S. Zemel".